

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8203 of 2003

Jayraj Jagannath Pawar and Ors. ..Petitioners

V/s

Smt.Housabai Bhimrao Pawar

and Ors. ..Respondents

Shri Vikas Kolekar for Petitioner

Shri R.V.More for Respondents

CORAM:S.R.SATHE, J.

DATED:31st Jan. 2006

P.C.:-

. Rule, returnable forthwith.

2. Heard both the learned Advocates at length.

3. The Petitioners original defendants had filed an application for seeking permission to adduce secondary evidence in respect of a Will. The said application was rejected by the learned trial Judge. Being aggrieved, the original defendants have filed the present petition.

4. The alleged Will is executed on 23-1-1979.

According to the defendants the original will is with the plaintiff. However, according to the defendant no.1 the same is stolen by the plaintiff. However, no evidence has been adduced in that behalf by the parties. It is alleged that will in question is executed by one Shevantabai in favour of defendant no.1. So, normally, it should have been in possession of the defendant no.1. However, the defendant no.1 has taken the stand that it has been stolen by the plaintiff, if the Petitioners fail to prove that it was stolen by the plaintiff then it was with whom the original when the same is not with them or in spite of due diligence and search they are not in a position to procure the original Will then only Petitioners can be permitted to adduce secondary evidence. However, it appears that guardian of defendant nos 3 and 4 has deposed that when she has enquired about the original registered will in Sub Registrar's office, at that time the Sub Registrar had shown the original Will to her. Naturally, it was necessary for the Petitioners to summon Sub Registrar for production of the original Will. When according to the Petitioner the same was in the office of the Sub Registrar, the Petitioners could have collected the information from the Sub Registrar's office as to whom the original Will was handed over by the said office. It seems that the Petitioners have not taken such steps for production of the original Will.

5. Under these circumstances the learned trial Judge

was right in rejecting the application and not permitting the Petitioners to adduce secondary evidence. The order cannot be said to be illegal or against the provisions of law. Hence there is no necessity to interfere with the said order.

6. The petition is rejected. However, the trial Court to give one more opportunity to the Petitioner to procure the original Will if the same is in Sub Registrar's office. The parties to appear before the trial Court on 20-2-2006. The Petitioners to take steps for production of the original Will within a period of one month thereafter and the trial Court is directed to decide the suit according to law on or before 30-9-2006.

(S.R.SATHE, J.)